IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C. (Appeal) No.247 of 2004

Commissioner of Income Tax I
Coimbatore. .. Appellant

versus

M/s.Premier Polytronics Ltd.
Coimbatore-640 018. .. Respondent

PRAYER: Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai "B" Bench dated 30.9.2003 in ITA No.935(Mds)/96 (Assessment Year - 1992-93) against the order of Commissioner of Income Tax, Coimbatore C.No.1416 (12) 95-96 dated 6.3.1996 and against the order of the Deputy Commissioner of Income Tax, Spl. Range-I, Coimbatore in P.A.No.CZ-9022/SR-1 dated 31.3.1997.

For appellant : Mr.V.Muralikumaran
Senior Standing Counsel for Income Tax

For respondent : Mr.Venkatanarayanan
for M/s.Subbaraya Iyer

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

This Tax Case Appeal is filed by the Revenue, raising the following substantial question of law:

" Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in setting aside the order of the Commissioner of Income Tax under Section 263 of the Income Tax Act, holding that while computing the deduction under Section 80 HHC in the case of the assessee for the assessment

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

year 1992-93, 90% of the service income, lease income and packing and forwarding collection should be excluded from the profits of the business and the said receipts would not be disqualified under explanation to Section 80 HHC (4A)? "

2. The assessment year under consideration is 1992-93. Originally, while computing the relief under Section 80-HHC, the Assessing Authority did not exclude 90% of the receipts pertaining to the service income, lease income and packing and forwarding collection. However, in exercise of power under Section 263 of the Income Tax Act, 1961, the Commissioner of Income Tax (Appeals) revised the order of assessment. In the process, the Commissioner held that the three items of receipt were not part of receipts from the manufacturing activities to have the character of a business income. Consequently, the Commissioner of Income Tax held that Section 80 HHC being an incentive given for actual export business and not over profits from non-export activities, they have to be excluded under the computation of the eligible income in terms of explanation (baa) to sub Section (4A) of Section 80 HHC. The Commissioner of Income Tax directed the Assessing Officer to re-compute the assessment under Section 80 HHC by excluding 90% of the total receipt of service income, lease income and packing and forwarding collection.

3. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the assessee preferred an appeal before the Income Tax Appellate Tribunal, wherein it was contended that the receipts on service are related to its business activity. It was also contended that the assessee had been selling plant and machinery to different buyers as part of its regular business. The assessee had also entered into Annual Maintenance Contracts with the buyers and charging separate service charges for maintaining such contracts. As far as the leasing income is concerned, the assessee contended that they were carrying separate leasing division as part of the diversified business and the lease rentals were arrived as business income. As far as packing and forwarding collection is concerned, it was contended that it was in the nature of recoupment of such expenditure already incurred by the assessee on behalf of the buyers while supplying the plant and machinery sold by the assessee. In support of its claim, the assessee relied on the decision of the Bombay High Court reported in 260 ITR 371 (CIT Vs. BANGALORE CLOTHING COMPANY) to contend that the Bombay High Court had held that the receipts forming part of the operational income of the assessee could not be excluded under Explanation (baa) to sub Section (4A) of Section 80 HHC. Applying the law declared by the Bombay High Court, the Income Tax Appellate Tribunal set aside the order of the Commissioner of Income Tax (Appeals). The Revenue

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

is on appeal challenging the correctness of the order of the Tribunal.

4. Learned counsel appearing for the Revenue submitted that the service charges and packing and forwarding charges did not form part of the business of the assessee and were hit by Explanation (baa) to sub section (4A) of Section 80 HHC. In the circumstances, learned counsel seeks the reversal of the order of the Tribunal.

5. A perusal of the order of the Tribunal shows that the assessee had received income on service charges as part of the collections of the business of the assessee company. These claims were against the Annual Maintenance Contracts. The assessee was selling plant and machinery to various buyers and consequently, the Tribunal held that for the smooth conduct of the assessee's business, the assessee had taken their responsibility of providing maintenance services to the buyers; in the process, the assessee had claimed service charges which are nothing but business receipts of the assessee company and that the activity of providing repair maintenance services is incidental and very much part of the assessee's principal business. Ultimately, the Tribunal held that these are part of the business receipts and as such, they cannot be excluded in the computation of the benefits under Section 80 HHC. The Tribunal also pointed out that the assessee had expended on the salary, etc., on the Engineer and Technician to discharge their contractual obligation of the Annual Maintenance Contract. As regards the expenses regarding the lease income, the Tribunal found that the the assessee was doing leasing business under a separate division. The assessee claimed depreciation which was also allowed on the plant and machinery deployed by the assessee in its leasing business, and therefore it was a business income. As regards packing and forwarding charges collection, the Tribunal found that it was not an independent income in the hands of the assessee company. In the face of incurring expenditure for packing and forwarding of machineries to various destinations on behalf of its purchasers, the reimbursement of the packing and forwarding charges is very much part of the assessee's business and hence, these are to be taken as business income. Ultimately, the Tribunal found that applying the law laid down by the Bombay High Court reported in 260 ITR 371 (CIT Vs. BANGALORE CLOTHING COMPANY) and considering the nature of business of the assessee, these income are very much part of the business income, which cannot be excluded for application of Explanation (baa) to sub Section (4A) of Section 80 HHC.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6. In this connection, the decision of this Court as to the scope of Explanation (baa) to sub section (4A) of Section 80 HHC reported in 288 ITR 151 (K.R.M.MARINE EXPORTS LTD. Vs. ASSISTANT COMMISSIONER OF INCOME TAX), to which one of us is a party (K.RAVIRAJA PANDIAN,J.), needs to be referred to. Referring to the decision of the Bombay High Court reported in 260 ITR 371 (CIT Vs. BANGALORE CLOTHING COMPANY), this Court held that when receipts like interest, commission, etc. are included in the business profits as the existing formula distorted the figure of export profits; therefore, in order to clarify the meaning of the business profits for the purpose of Section 80HHC Clause (baa) to explain the same was inserted to remove the doubt in calculating export profits. This Court also held that the numerator and denominator showed that they referred to sale proceeds. The numerator and the denominator are required to have a common element which is the sale proceeds. In this background, the profit referred to in Section 80HHC is not the general profit, but is the export profit, which had to be calculated and worked out with reference to the other provisions and definitions contained in the Section itself, which sort of exercise had not been done in that case.

7. The Bombay High Court in the decision reported in 260 ITR 371 (CIT Vs. BANGALORE CLOTHING COMPANY), held that unless and until the officer concerned has necessary materials to show the nature of activity of the assessee to qualify for the non-application under Explanation (baa), it is not possible for any authority for that matter to straight away apply the formula to restrict the allowable deduction under Section 80 HHC. The Bombay High Court also held that no standard test could be laid down to find out what would constitute operational income. Hence, the Department has to consider the nature of the activity and the business of the assessee and such other test to find out what would be the dominant business of the company and whether receipts like interest, commission, etc., accrue as a part of the main business activity or whether they accrue out of incidental business, and apply such test. In this background, we look at the facts of this assessment.

WEB COPY

8. The Tribunal, as a matter of fact, found that the income from the leasing of the company, amount received by way of service charges as well as recoupment of packing and forwarding collection are nothing but forming part of the business income. In the nature of the facts found by the Tribunal, unless and until there are facts otherwise to show the character of the transaction, it is not possible to accept the plea of the Revenue that the transactions does not carry the character of business income. Hence, in the

https://hcservices.ecourts.gov.in/hcservices/

face of the facts recorded by the Tribunal, it is not possible to accept the plea of the Revenue in an appeal filed under Section 260-A. Consequently, applying the decision reported in 288 ITR 151 (K.R.M.MARINE EXPORTS LTD. Vs. ASSISTANT COMMISSIONER OF INCOME TAX), following the decision of the Bombay High Court reported in 260 ITR 371 (CIT Vs. BANGALORE CLOTHING COMPANY), we do not find any merit in this appeal. Consequently, this Tax Case Appeal is rejected and the order of the Tribunal stands confirmed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ksv

To:

1. The Commissioner of Income Tax I
Coimbatore.

2. Deputy commissioner of Income Tax,
spl. Range, I, Coimbatore.

3. The Assistant Registrar,
Income Tax, Appellate Tribunal
B Bench, Chennai.

4. The Commissioner of Income Tax,
Chennai-34.

1 cc to Mr.N. Muralikumaran, SR.66628

WEB COPY

T.C. (Appeal) No.247 of 2004

KM (CO)
kk 29/11

https://hcservices.ecourts.gov.in/hcservices/